SINGAPORE REPORTS

NG KHONG LIM v. NANCY TEO

[C.A. (Wee Chong Jin C.J., Sinnathuray & Thean JJ.), March 12, 1985]

[Singapore - Civil Appeal No. 32 of 1984]

Conveyancing – Sale and purchase of land – Road interpretation plan – "Required .... as a road reserve" – Whether purchase price to be abated – Whether purchaser liable to pay interest for late completion – Planning Act (Cap. 279), ss. 3 & 8 – Local Government Integration Act (Cap. 210), ss. 16A & 28.

Contract – Agreement for Sale and Purchase of land Interpretation – Road interpretation plan – "Required ... as road reserve" – Whether purchase price to be abated – Whether purchaser liable to pay interest for late completion – Planning Act (Cap. 279), ss. 3 & 8 – Local Government Integration Act (Cap. 210), ss. 16A & 28.

By a written Agreement of May 6, 1983, the appellant was the purchaser of two plots of land ("the said property") at Telok Kurau Road forming the residue of the estate of Chan Ah Leck, deceased. The respondent was the vendor of the said property and was the beneficiary of the said estate and was entitled to one half share of its residue. The said property was vested in the trustees of the will of the deceased and negotiations with the trustees had not been smoothgoing for the respondent for the purchase of the said property from them. The appellant and the respondent had therefore varied their Agreement of May 6, 1983 by a Supplementary Agreement, a new agreed clause (Clause 7) to which reads as follows:

"7. In the event of a certain portion of subject properties being required by the Competent Authority or by any other Government Authorities as a road reserve on or before completion of purchase by the Purchaser, the cost of the purchase of the said portion so reserved shall be deducted from the balance of the purchase price according to the gross area so affected by road reserve."

It is this clause which has given rise to the present litigation between the parties.

At the request of the appellant's solicitors, the Public Works Department issued a road interpretation plan ("RIP") showing, *inter alia*, (i) a line on the said property as "Line of Road Reserve" and (ii) a shaded portion (241.9 sq.m. or 2,604 sq. ft.) demarcated as "Land required for Road Widening". The appellant claimed under Clause 7 that an area of 241.9 sq.m. should be deducted from the total area of the said property and accordingly there should be an abatement of the purchase price payable to the respondent who did not agree to the abatement. In the High Court, Abdul Wahab Ghows J. held that the appellant was not entitled to the abatement of the purchase price and declared that the appellant should reimburse the respondent interest amounting to $5,237.96 for late completion. The appellant appealed against that decision.

Held: (1) in the context of Clause 7 the word "required" means "demand" or "called for". Clause 7 means that if a portion of the said property is required by the competent authority or any other government authority as a road reserve on or before completion of the purchase by the appellant, such portion is to be deducted from the total area of the said property in completing the purchase price;

(2) none of the circumstances in Clause 7 have occurred. There was no notice, step or action from any authority on its own motion to the owners of the said property or any interested party requiring a portion of the said property for a road reserve. The RIP plainly is not sufficient for the purpose of Clause 7. Accordingly no abatement on the purchase should be allowed;

(3) the appellant is not legally liable for the interest of $5,237.96 paid by the respondent to the trustees;

(4) the appeal is dismissed (with ¾ of the costs to the respondent).

Case referred to:

(1) *Gibbon* v. *Phillips* (1894) 64 L.J.M.C. 42.

COURT OF APPEAL.

C. S. Wu for the appellant.

Chim Hou Yan for the respondent.

Cur. Adv. Vult.

Thean J. (delivering the Judgment of the Court). The Respondent is a beneficiary of the estate of Chan Ah Leck deceased and is entitled to one half share of the residue of the said estate, which at the material time consisted of two adjoining plots of land situate at Telok Kurau Road and marked on the Government Resurvey Map as lots 345-155 and 345-97 of Mukim 26 containing respectively the areas of 18,052 square feet and 1315 square feet. On the larger plot of land stand two semi-detached houses known as 91 and 89, Telok Kurau Road, Singapore which were occupied by the Respondent and her brother respectively. The smaller plot is a very narrow strip of land situate at the front and abutting on the road.

On May 6, 1983 an agreement in writing (the "Agreement") was made between the Respondent as the vendor and the Appellant as the purchaser in relation to the sale and purchase of the said two plots of land. At that time the two plots of land (the "said property") were vested in the trustees of the will of Chan Ah Leck deceased (the "Trustees"), and no part thereof had been transmitted to the Respondent as a beneficiary. So what the parties intended was that the Appellant should purchase the said property from the Respondent who in turn would then purchase the same from the Trustees, and the purchase by the Appellant

should be conditional on the purchase by the Respondent of the said property from the Trustees. This intention was not clearly reflected in the Agreement and it is best to set out *verbatim* the relevant clauses:

"1. The Vendor shall sell her said half share of the said estate and the Purchaser shall purchase the same free from encumbrances at a price of Dollars seven hundred and forty thousand one hundred and thirty-two ($740,132/-) for the said half share and the balance half (½) share to be acquired from the Trustees or the other beneficiary at a price which shall be determined as hereunder set out. It is understood that the price agreed herein is calculated at $82/- per square foot based on an area of 18,052 sq. ft.

2. . . .

3. This Agreement is conditional upon the Vendor acquiring from the Trustees or the other beneficiary of the Estate of Chan Ah Leck, deceased the said properties. The overall price that the Vendor should offer to purchase the other half (½) share is agreed at $740,132/- and the purchaser agrees that within reason he shall support the vendor's negotiation should the said price demanded by the Trustees or the other beneficiary be more than the said sum of $740,132/-. The final purchase price shall be determined by the purchaser. Should the price concluded fall below the said sum of $740,132/- the parties shall share the difference equally. The Vendor shall consult the purchaser and seek his agreement before confirming her purchase with the Trustees."

Nothing in this appeal however turns on these provisions and as can be seen from subsequent events the parties did proceed to give effect to their intention.

Having concluded the Agreement the Respondent began negotiations with the Trustees. But such negotiations, as it turned out, had not been smooth going. Though agreement had been reached with the Trustees on the price of the said property at $86/- per sq. ft. less 2% commission, there were two obstacles in the way. First, although the Respondent was in occupation of No. 91, Telok Kurau Road, the adjoining house No. 89, Telok Kurau Road was occupied by her brother and she therefore required the Trustees' confirmation that vacant possession of that house would be given on completion. The Trustees, however, were not prepared to sell the said property to the Respondent with vacant possession. Secondly, the sale price of the said property agreed upon between the Appellant and the Respondent was arrived at on the basis of $82/- per sq. ft. on the area of only the bigger plot, *i.e.* 18,052 sq. ft., the area of the smaller plot being wholly disregarded. That was not acceptable to the Trustees who insisted that the total area of the two plots, namely, 19,367 sq. ft., should be taken into account in computing the purchase price of the said property. On that basis the price for the half share not beneficially owned by the Respondent would amount to $832,781 which was in excess of the price contemplated in the Agreement.

In consequence the Appellant and the Respondent had a series of negotiations between themselves and arising therefrom the parties agreed to vary some of the terms of the Agreement. The variations in so far as material are these. The area of the said property adopted for computing the purchase price is 19,367 sq. ft., being the total area thereof, and the price for the one half share, to which the Respondent was beneficially entitled, was $794,047 at the rate of $82/- per sq. ft. and the price for the other half share was $832,781 at the rate of $86/- per sq. ft. In addition, the Appellant also agreed that upon redevelopment of the said property he would grant to the Respondent an option to purchase one unit of the premises so redeveloped at a discount of 15% of the sale price. A supplementary agreement setting out the variations as agreed upon was drawn up by the Respondent's solicitor and was signed by the Appellant on August 12, 1983, which however remained unsigned by the Respondent as at that date. Subsequently further changes were made to the supplementary agreement. First, just before September 7, 1983 (being the date of the supplementary agreement) the Appellant and Respondent agreed to two changes: (i) the price for the one half share to which the Respondent was beneficially entitled was increased to $871,515 calculated at $90 per sq. ft. and (ii) the discount given to the Respondent for purchasing from the Appellant a unit of the premises to be redeveloped upon exercise of the option was reduced to 15% on the profit accruing from such unit. Secondly, on September 7, 1983 after the supplementary agreement had been signed by the Respondent and returned to the Appellant's solicitors for the two changes thereon to be initialled by the Appellant, a new clause was agreed upon and added thereto as clause 7. This clause was drafted by the Appellant's solicitor and read to the Respondent's solicitor over the telephone who approved it. This clause 7 ("Clause 7") is as follows:

"7. In the event of a certain portion of subject properties being required by the Competent Authority or by any other Government Authorities as a road reserve on or before completion of purchase by the Purchaser, the cost of the purchase of the said portion so reserved shall be deducted from the balance of the purchase price according to the gross area so affected by road reserve."

We shall return to this clause later, as it is this clause which has given rise to the present litigation between the parties.

With the conclusion of the supplementary agreement the Respondent proceeded with the purchase of the said property from the Trustees. On September 10, 1983 the sale and purchase agreement with the Trustees was signed under which the Respondent agreed to purchase from the Trustees the said property at the price of $1,632,250.76. As the Respondent was beneficially interested in one half of the said property she was only required to pay to the Trustees 50% of the said purchase price, plus a sum of $20,000 to be held by the Trustees for payment of legacies, expenses and outgoings of the estate of Chan Ah Leck deceased and the balance of the said purchase price would be deemed to be fully paid to the Respondent from the said estate as distribution to her under the terms of the will of Chan Ah Lek deceased.

Immediately after the supplementary agreement had been concluded the Appellant's solicitor on September 9, 1983 wrote to the Senior Executive Engineer of the Road Division, Public Works Department ("PWD"), enquiring whether the said property or any part thereof was affected as a road reserve or other improvement scheme and, if so, the extent thereof affecting the said property. Presumably he also applied for a road interpretation plan. In response the PWD issued a road interpretation plan ("RIP") signed by the Senior Executive Engineer (Roads) (Planning & Design) which contained, *inter alia*, a legend showing: (i) a line on the said property as "Line of Road Reserve" and (ii) a shaded portion demarcated as "Land required for Road Widening". It also contained the following:

"NOTE:
THE INFORMATION GIVEN ON THE PLAN FORMS THE BEST INFORMATION AVAILABLE ON 9 SEP. 1983 AND IS LIABLE TO CHANGE WITHOUT NOTICE".

Subsequently, the solicitor for the Appellant obtained a letter dated October 7, 1983 from the Survey Department stating that the area of the shaded portion of the land affected by the road widening line was 241.9 sq. m. In the meanwhile, the Respondent who presumably had by then been apprised of the RIP also made enquiry with the PWD with regard to the implication of the information in the RIP and received a letter dated October 7, 1983 from the PWD containing, *inter alia*, the following clarification:

"Road Interpretation Plans indicate the long term road widening requirements for particular roads. As a general rule, the extent of "Land required for Road Widening" and "Buffer" set-backs indicated on our Road Interpretation Plans are inserted for development control purposes. The required set-backs need only be complied with when the site comes for redevelopment. Existing "protrusions" beyond the road widening line or buffer may be retained indefinitely until the site comes up for redevelopment."

Armed with the RIP and the letter from the Survey Department the Appellant invoked Clause 7 and insisted that an area of 2,604 sq. ft. being the approximate equivalent of 241.9 sq. m. should be deducted from the total area of the said property for calculating the purchase price, and that accordingly there should be an abatement of the purchase price payable to the Respondent. The Respondent however took the stand that Clause 7 did not apply and there should be no abatement of the purchase price. Lengthy correspondence ensued between the respective solicitors of the Appellant and the Respondent which turned out to be unfruitful. Obviously because of this a delay in completing the purchase by the Respondent of the said property from the Trustees resulted, and in consequence the Respondent was required to pay interest to the Trustees for late completion in the purchase. The Respondent in turn claimed from the Appellant interest which she said had been paid to the Trustees. To resolve the dispute between them the Appellant then took out an Originating Summons for determination of the question whether in the light of the RIP and the letter from the Survey Department the Appellant is entitled to an abatement of the purchase price under Clause 7 and for a declaration that he is not liable for payment of interest claimed by the Respondent. The application was heard by Abdul Wahab Ghows J. who held that the Appellant was not entitled to an abatement of the purchase price on the ground that Clause 7 would only apply if a portion of the said property was required as a road reserve on or before completion, which he held was not the case, and he declared that the Appellant was liable to pay to the Respondent interest amounting to $5,237.96 which was paid by the Respondent to the Trustees for the late completion. Against that decision this appeal is now brought.

The question whether the Appellant is entitled to an abatement of the purchase price under Clause 7 really turns on the true construction of that clause and on the circumstances that have occurred. Mr. Wu on behalf of the Appellant argues that the term "required" under Clause 7 should be con-

strued as "necessary", citing the case of *Gibbon* v. *Phillips*,[1] where the word was so construed, in support of such a construction and that in the context of Clause 7 the term cannot mean "acquired by the Government". Further the term "road reserve" should be given its ordinary meaning, *i.e.* land reserved by the competent authority or any other government authority for construction or widening of road. On the basis of this construction Mr. Wu relies wholly on the RIP and submits that the shaded portion of the said property as demarcated therein is required by the competent authority or a government authority as a road reserve and in consequence Clause 7 operates and the Appellant is entitled to an abatement of the purchase price.

Before we deal with Mr. Wu's contention, we need to say a word on road interpretation plans generally. The purpose of road interpretation plans is well known to architects, engineers and lawyers in Singapore. They are frequently applied for by these persons for the purpose of ascertaining whether the properties with which they are concerned are affected by any road reserve or road widening proposal and as a matter of course they are issued by the PWD on application and payment of the prescribed fee. Such information is particularly helpful to developers who have plans for development or redevelopment of the properties concerned. A road interpretation plan is not issued by the PWD pursuant to or under any Acts, rules, regulations or by-laws. It is not a "Certified Interpretation Plan" under Section 8 of the Planning Act (Cap. 279), as such a plan under that section is to be prepared and certified by the competent authority. The term "competent authority" is defined in Section 3 of the Planning Act and the Director or a Senior Executive Engineer of the PWD is not such a competent authority within the meaning of that Act. Nor is a road interpretation plan prepared by the Director of the PWD under Section 16A or 28 of the Local Government Integration Act (Cap. 210). Like answers or replies furnished by government departments to legal requisitions or enquiries it is merely a plan giving information of requirements, present or in the future, of any road line and road widening.

Turning now to Mr. Wu's argument, we are in agreement with him that the word "required" does not mean "acquired by the Government" and that the term "road reserve" should be given its ordinary meaning. However, we do not agree with him that the word "required" in Clause 7 should be construed as "necessary" as in *Gibbon* v. *Phillips* (*supra*). The word in that case was used in an entirely different context, and the construction given to the word there is of no assistance to us. In the context of Clause 7 and particularly in relation to the other words present there: "... being required by the Competent Authority or by any other Government Authorities as a road reserve...", the word "required" clearly must assume a more positive sense than "necessary". In our view in the context of Clause 7 the word "required" means "demanded" or "called for". It seems to us that the meaning of Clause 7 is clear and it is this: if a portion of the said property is required by the competent authority or any other government authority as a road reserve on or before completion of the purchase by the Appellant, such portion is to be deducted from the total area of the said property in computing the purchase price.

The next question is whether the circumstances described in Clause 7 have occurred on the basis of which Clause 7 then comes into operation. In our opinion upon a true construction Clause 7 will only apply if the following are satisfied:-

(i) The event of a certain portion of the said property being required for road reserve had occurred since the supplementary agreement;

(ii) the requirement is one made by the competent authority or any other government authority, and

(iii) the requirement subsisted on or before completion of the purchase by the Appellant.

None of these circumstances have occurred. There was no notice, step or action emanating from any authority (be it competent authority or other government authority) on its own motion to the owners of the said property or any interested party requiring a portion of the said property for a road reserve. The RIP and the information therein contained were solicited by the Appellant's solicitor. The RIP plainly is not sufficient for the purpose of Clause 7. As explained by the PWD in the letter of October 7, 1983 the extent of "Land required for Road Widening" and "Buffer" set-backs "are inserted for development control purposes" and the required set-backs need only be complied with when the site comes for redevelopment. In other words, the RIP merely demarcated a line of road reserve and a portion of the land for road widening in the future and upon a certain event, namely, redevelopment of the said property. It is manifestly clear to us that the RIP was not issued pursuant to or under any Acts, rules, regula-

tions or by-laws. Mr. Wu on behalf of the Appellant submits that the PWD's demarcation of the road reserve line and the portion of land for road widening was made with concurrence of the competent authority. That is not so. There is no evidence of such concurrence, and the demarcation was not made pursuant to Section 16A or 28 of the Local Government Integration Act.

If in these circumstances Clause 7 is held to operate, one would have to construe it to mean that where a certain portion of the said property is being earmarked or demarcated by the competent authority or any other government authority as a reserve for road widening upon redevelopment of the said property, the cost of the purchase of such portion is to be deducted from the purchase price. Such a construction is plainly untenable. It would in effect be tantamount to a re-writing of Clause 7 in the following terms:

"*Where* a certain portion of ... is being earmarked *by* the competent authority or by any other government authorities as *a reserve for road widening upon redevelopment*, the costs ..."

(The emphasis to highlight the material changes to the clause.) It is a principle of construction of contracts that words must be construed as they stand and the meaning of the contract or a particular clause is to be sought in the document itself. This principle is concisely stated in *Chitty* on Contracts, Vol. II (25th ed.) at page 421:

"**Intention of the parties.** The cardinal presumption is that the parties have intended what they have in fact said, so that their words must be construed as they stand. That is to say, the meaning of the document or of a particular part of it is to be sought in the document itself: "One must consider the meaning of the words used, not what one may guess to be the intention of the parties." However, no contract is made in a vacuum. In construing the document, the court must therefore always have regard to its commercial purpose and the factual background against which it was made."

In connection with the point as to what the parties intended we make two observations. First, as a matter of general knowledge and experience in Singapore, a solicitor versed in conveyancing practice and also a developer or his advisor, such as an architect or engineer, on seeing a site plan showing a layout of the said property and adjacent plots of land would have perceived unmistakably that at least the narrow strip of land fronting Telok Kurau Road and comprising the smaller plot, namely, Lot 345-97, would most likely be affected by road widening upon redevelopment of the said property. (Such a site plan is easily available at the Survey Department upon payment of the prescribed fee). That this likelihood was known to the Appellant and the Respondent we have no doubt. It must have been for this reason that the Agreement initially discounted entirely this smaller plot of land and the purchase price was calculated only on the area of the larger plot of land. This point, however, was subsequently re-negotiated and the parties then agreed to include this smaller plot in calculating the purchase price; and this agreement was reached in the knowledge of that likelihood. Secondly, again as a matter of general knowledge and experience in Singapore, though the RIP was issued to the Appellant on September 9, 1983 or immediately thereafter, the information therein contained must have been in existence for some time prior to the signing of the supplementary agreement. The Appellant's solicitor in his letter of October 24, 1983 indirectly confirmed this point (see page 84 of the Record of Appeal) where, after stating that an area of 241.9 sq.m. was affected by a road reserve, he said:

"Indeed the entire stretch of Telok Kurau Road concerning most of the lots in the area between Changi Road and Joo Chiat Place have been similarly reserved for road widening for sometime now as the Survey Department's Litho Sheet (copy attached) for Mukim XXVI Siglap reveals."

Having regard to these facts it seems to us that if the parties had intended that there should be an abatement of the purchase price where a portion of the said property is affected by a reserve for road widening as shown on the RIP, they could either (i) have obtained this information from the PWD and the Survey Department, discounted the area of such a portion and computed the purchase price accordingly when they concluded the supplementary agreement, thus dispensing with the need to make any provision to this effect, or (ii) drafted Clause 7 along the lines as re-written by us above.

For completeness we should perhaps deal with the last point which though not featured in Mr. Wu's argument was canvassed before Abdul Wahab Ghows J. It is this. The Respondent knew that the Appellant was purchasing the said property for redevelopment and this was borne out by the presence of Clause 6 of the supplementary agreement. With this in view it must have been contemplated by both parties that if any portion of the said property is affected by a reserve for road widening upon redevelopment that portion is to be deducted from the total area in computing the purchase price, and Clause 7 is intended to cover such a situation. Accordingly, in these circumstances, an abatement of the purchase price should

be allowed. Such an argument has no merit. The said property was not sold for the purpose of redevelopment; neither the Agreement nor the supplementary agreement contains any provision to this effect. Nor can such a term be implied. Therefore whether the Respondent knew of the purpose of such purchase is immaterial. It is true that under Clause 6 of the supplementary agreement the Appellant agreed that on redevelopment of the said property he would grant an option to the Respondent to purchase a unit at a certain discount. However, as Abdul Wahab Ghows J. said, this does not make her a party to the redevelopment. Nor does it oblige the Appellant to redevelop the said property.

We now turn to the other issue in this appeal, namely, whether the Appellant is liable to reimburse the Respondent interest paid by the latter to the Trustees for the late completion of the purchase of the said property. The Agreement, as amended by the supplementary agreement, does not contain any provision imposing on the Appellant an obligation to reimburse any interest paid by the Respondent to the Trustees, and it is far from clear on what basis the Respondent is making her claim for such reimbursement. Mr. Chim on behalf of the Respondent did not really advance any argument in support of this claim. We are therefore in agreement with Mr. Wu that the Appellant is not legally liable for any interest paid by the Respondent to the Trustees.

This Appeal substantially fails and is dismissed, save and except that the Order made on April 26, 1984 is to be varied by expunging therefrom the part thereof requiring the Appellant to pay to the Respondent the sum of $5,237.96 being interest for the late completion.

As for costs, we do not think that the Respondent should be allowed the whole costs of this Appeal, and we allow her only three-quarters of the costs of this Appeal. There will be the usual consequential order that the amount deposited in Court as security for costs be paid to the Respondent or her solicitor to account of costs.

Appeal dismissed.

Solicitors : *Donaldson & Burkinshaw; Hilborne & Co.*

THE "KOHEKOHE"
M.V. "KOHEKOHE", OWNERS OF, & ORS. INTERESTED v. SUPARDI BIN SIPAN

[C.A. (Sinnathuray, Lai Kew Chai & Thean JJ.) July 1, 1985]

[Singapore – Civil Appeal No. 56 of 1983]

Tort – Negligence – Personal injuries suffered in course of employment as crew member of ship – Damages – Whether there was contributory negligence.

Damages – Leg – Amputation of right thigh – Assessment of damages.

In this appeal, the plaintiff obtained judgment in the High Court in the sum of $142,072.00 for personal injuries suffered by him in the course of his employment as a member of the crew of the ship M.V. "Kohekohe" ("the ship") against the defendants, the owners of and other persons interested in the ship. The claim was for negligence and breach of duty by the defendants, their agents or servants in the management of the ship, in particular, that the defendants had failed to provide a safe system of work. As a result of this, an accident occurred which resulted in the plaintiff having a traumatic amputation of the right thigh at the level of 1/3 inferior and 1/3 medium. For pain and suffering and loss of amenities the plaintiff was awarded $42,000 as general damages. The defendants appealed against the judgment both on liability and quantum of damages contending: (1) although the defendants were negligent in failing to provide a safe system of work, the learned judge ought to have found contributory negligence on the part of the plaintiff; (2) the figure of $42,000 awarded as general damages was taken from cases where general damages were awarded inclusive of loss of future earnings.

Held: (1) the facts showed that there was no contributory negligence on the part of the plaintiff. The defendants were wholly to blame for the accident as they had failed to provide a safe system of work;

(2) the figure of $42,000 were not taken from cases where general damages were awarded inclusive of loss of future earnings. The learned judge specifically said that the general damages of $42,000 was for "the amputation of the right leg";

(3) when damages for negligence are assessed under separate heads, and as the matters considered under the head of general damages for pain and suffering and loss of amenities are wholly different from those considered under the head of loss of future earnings, there ought not to be an overlapping in these two awards.

Cases referred to:

(1) *Lee Yew Hoe* v. *Lee Bock Huat* [1980] 2 M.L.J. 271.
(2) *R.J. McGuiness* v. *Ahmad Zaini* [1980] 2 M.L.J. 304.
(3) *Lai Wee Lian* v. *Singapore Bus Services (1978) Ltd.* [1984] 1 M.L.J. 325.
(4) *Low Kok Tong* v. *Teo Chan Pan* [1982] 2 M.L.J. 299.